
Appeal Decision

Site visit made on 14 November 2016

by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 February 2017

Appeal Ref: APP/F9498/W/16/3156805

The Studio, Bessom Bridge, Wimbleball Lake, Brompton Regis, Dulverton TA22 9NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Linda Evans against the decision of Exmoor National Park Authority.
 - The application Ref 6/3/16/110, dated 25 April 2016, was refused by notice dated 3 August 2016.
 - The development proposed is change of use from commercial building for use of textile designer's studio and workplace to a single live/work Unit.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning permission was granted in 2013¹ for the change of use and conversion of the building on the site into a commercial building for use as a textile designer's studio and workplace. The appellant is seeking to change the use of the building into a live/work unit. The planning application form indicates that the use has already occurred and this accords with my observations. No external changes to the building are proposed, but a curtilage to the building is indicated, which would extend along the banks of the reservoir and into part of the wooded area to the rear of the building.
3. The main issues in this case are whether the principle of the change of use is acceptable having regard to the location of the appeal site; and its effect on the character and appearance of the area.

Reasons

Principle

4. The appeal site is situated within the Exmoor National Park, a short distance off a local minor road, Ruggs Hill. It is accessed via an existing purpose-built track leading to an adjacent car park. The area is rural in character, with Wimbleball Reservoir approximately 100 metres to the west. Along with the attached telephone exchange, the location of the appeal site is isolated from other development in the area. For the purposes of the development plan, I agree with

¹ Ref 6/3/13/109

the Council that the appeal site stands alone in the countryside. It is not located within a village, hamlet or farmstead.

5. The Council's approach to new housing in the National Park, as contained within the Exmoor National Park Local Plan (including minerals and waste policies) 2001-2011 (LP) and the emerging Local Plan (LPPD)² is to focus provision on affordable housing to address the needs of local people. This supports the social role of sustainability as set out in the Framework, which includes providing the supply of housing required to meet the needs of present and future generations.
6. The Council has quoted a number of policies within its decision notice which largely seek to control new housing development in the countryside. There are no specific policies relating to live/work units; however a number of policies relate to the change of use of buildings. These are LP Policies CBS1, CBS2, CBS3 and H7.
7. Policy CBS1 sets out general criteria against which applications for change of use will be considered; Policy CBS2 allows for the change of use to employment and residential use, but only where the site is located in a village, hamlet or farmstead, which the appeal site is not. Policy CBS3 allows for the change of use of buildings where a site stands alone in the countryside, as is the case with the appeal site, but only where the proposal is for a camping barn.
8. LP Policy H7 and emerging LPPD Policy HC-D7 allow for the change of use of buildings to residential use, subject to local need criterion being satisfied, that a proven essential need is demonstrated by the intended occupants, and that the proposed need for the dwelling cannot be met within the existing housing stock or from sites/buildings already with planning permission. I note the appellant's desire to live where she works, however I have not been provided with evidence to demonstrate that there is an essential need for her to live at her place of work, that her particular circumstances meet the local need criterion, or that there is no suitable accommodation in the area.
9. The application form indicates that the proposal is for intermediate housing, and the appellant submits that the scheme would provide much needed one bedroom accommodation in Dulverton parish. I have no reason to doubt that there is a need for affordable dwellings in the area; indeed the policies of the development plan and emerging LPPD seek to address this need. However, whilst noting the appellant's willingness to enter into a unilateral undertaking or legal agreement to ensure that the accommodation became an affordable dwelling once the appellant ceased to occupy or own the property, I have not been provided with a suitable mechanism to secure this.
10. The appellant also suggests that a planning condition stipulating the habitation of the property by persons who have lived within a set radius of the property for a minimum set period of time, and who are registered on an affordable housing waiting list would be a satisfactory mechanism to control the affordability of the dwelling. Whilst such matters could be controlled by an appropriately worded planning condition, I have not been provided with convincing evidence that the appellant would satisfy such criteria.
11. The above policies broadly accord with the Framework, which at paragraph 55 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. New

² Exmoor National Park Local Plan (including minerals and waste policies) Publication Draft

isolated homes should be avoided unless there are special circumstances. Examples of these special circumstances include the essential need for a rural worker to live permanently at or near their place of work in the countryside, and where the development would re-use redundant or disused buildings and lead to an enhancement of immediate setting.

12. On the basis of the evidence before me, I am not convinced that it is essential for the appellant to live at her place of work. Furthermore, whilst noting the appellant's assertion that the building was redundant prior to it being converted into its current use; this is no longer the case. In light of this, and my findings above I find that the appeal scheme does not fall within any of the special circumstances set out in the Framework.
13. In light of the foregoing, I conclude that the change of use of the building to a live/work unit in this location would not be acceptable as it would conflict with the objectives of LP Policies CBS2, CBS3, H7 and emerging LPPD Policy HC-D7. In the absence of a suitable mechanism to control the occupancy of the building as set out in LP Policies H1 and H2, there would also be conflict with these policies. There are no special circumstances demonstrated to justify a new isolated home in this location.

Character and Appearance

14. Although the proposal would utilise an existing building and no changes to its exterior are proposed, I share the Council's concern that by granting planning permission for the proposed use, the red line of the application site would become the curtilage of the building. At present, the land surrounding the building is largely open and undeveloped, with no enclosures, apart from the immediate environs of the building. Whilst I accept that permitted development rights could be removed for certain forms of development including buildings, extensions, fencing and walls, such control could not extend to future planting or domestic paraphernalia such as washing lines and garden furniture. Having regard to the size of the proposed curtilage and the likely domestic paraphernalia that could be placed upon it, I share the Council's concern that there would be a high probability that the change of use would result in domestication of the appeal site. This would be harmful to the character and appearance of this area of countryside.
15. In light of the foregoing, I find that the scheme would not conserve the landscape and scenic beauty of the area. This would conflict with LP Policies LNC1, CBS1 and CBS12 and emerging LPPD Policies GP1, CE-S1 and CE-D1 in that the proposal would not be compatible with the conservation or enhancement of the natural beauty of Exmoor. I attach great weight to this matter in accordance with paragraph 115 of the Framework, which states that amongst other matters, National Parks have the highest status of protection in relation to landscape and scenic beauty.

Other Matters

Whether Sustainable Development

16. The appellant submits that the proposed live/work unit would comprise sustainable development. An existing building would be reused which would support the environmental role of sustainability and the core planning principle of the Framework relating to the reuse of land that has previously been developed. The proposal would also support flexible working practices as set out in paragraph 21 of

the Framework. There would be some economic benefits associated with the proposal over and above the building's permitted use; the appellant would continue to sell her goods in local outlets and she would support local facilities in the area where she lives, including shops, pubs, restaurants and garages.

17. The social role of sustainability includes accessible local services. The appeal site is located some distance from the nearest settlement Brompton Regis. The Council has calculated this to be 2 kilometres and reference has been made to this settlement having a village store and pub. The roads between the appeal site and Brompton Regis have no street lighting or pavements. The Council submit that access to public transport facilities is limited; this is not disputed. There would therefore be a high probability that the appellant would drive to the services and facilities in this settlement rather than walk or cycle. In the event that the appellant or future occupiers of the building did not have access to a car, the services and facilities would not be accessible. I find that the relationship of the appeal site to the nearest services results in conflict with both the social and environmental role of sustainability in this regard. The relationship of other dwellings in the area to services and facilities does not provide justification for the appeal scheme, given the harm that I have identified.
18. I note the appellant's submissions that the likely number of vehicle movements associated with the live/work unit would be less than the commercial use of the property. However, these submissions have not been qualified. In any event a dwelling would be likely to generate a number of vehicular trips in its own right, including deliveries, trips to shops, local services, leisure and entertainment facilities and to friends and relatives. Accordingly, I am not convinced that the proposal would generate materially less vehicular trips than the commercial use of the site.
19. In light of the foregoing, there would clearly be some economic, social and environmental benefits associated with the proposal. There would also be conflict with the social and environmental roles of sustainability as a result of the harm that would be caused to the character and appearance of the area, the high reliance the intended occupiers would have on the private car, and the resultant new, isolated dwelling in the countryside for which there are no special circumstances.
20. The Framework makes it clear at paragraph 8 that the three roles of sustainability should not be undertaken in isolation, because they are mutually dependent. Therefore to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The appeal scheme does not achieve this. I therefore conclude that the proposal does not constitute sustainable development when considered against the Framework and the development plan taken as a whole.

Whether Intentional Development

21. The appellant submits that she lives at the building and I noted on my visit that there was a mattress at first floor level, accessed by a ladder. There was also an open plan living, kitchen and work space on the ground floor. The Council has advised that it has served an enforcement notice in respect of the unauthorised use. On the basis of the evidence before me, I have no reason to doubt that The Studio is the appellant's home.
22. On 31 August 2015, the Department of Communities and Local Government published a planning policy statement on a number of matters including intentional

unauthorised development. The policy came into force on that date and it makes intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals. It applies to all new planning applications and appeals received from 31 August 2015.

23. The Council consider that the appellant started living in the property intentionally. It is submitted that the appellant should have been aware of the condition (No 5) attached to the 2013 planning permission which prevented the use of the building for habitable accommodation. Even if the appellant had not been aware of the said condition, the Council has indicated that it sent an email to the appellant advising her that converting the premises to habitable accommodation would not be supported. The appellant is silent on this matter, despite it forming part of the refusal reason in the Council's decision notice.
24. Given the planning history of the site, that the appellant was the applicant for the 2013 planning permission, and subsequent correspondence relating to the habitable use of the property, it is difficult to see how the change of use to a live/work unit could be described as anything other than intentional; the appellant must have known the change of use was unauthorised when she started to live in the property. Whilst I have not been provided with evidence of when the unauthorised use began; given that the planning application was submitted to the Council after the 31 August 2015, this matter is a material consideration in this appeal.
25. Having regard to my findings, I conclude that the development is 'intentional unauthorised development' within the meaning of the 31 August 2015 planning policy statement. This is a material consideration which weighs against granting planning permission in this case.

Human Rights

26. The appellant has made representations that in the event that the appeal is dismissed she would be made homeless. She considers that this would interfere with her rights to respect for private and family life under Article 8 of the Human Rights Act 1998. These are qualified rights, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
27. The appellant would be likely to lose her home and suffer disruption to her family life if planning permission is not granted for the development. But the protection of National Parks and the character and appearance of the countryside are legitimate and well established planning policy considerations. The interference with the appellant's human rights if the appeal is dismissed would be no more than is necessary to control the use of the site in the general public interest. Such a decision would not be disproportionate, and would not result in a violation of the appellant's rights under the Convention. The protection of the public interest cannot be achieved by means that are less interfering of her rights.

Conclusion

28. For the above reasons, and taking into account all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR